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No. 530 20

In the Supreme Court of the United States

OCTOBER TERM, 1950 51

THE UNITED STATES OF AMERICA, APPELLANT,

v.

LOUISE VIRGINIA SMITH

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

STATEMENT AS TO JURISDICTION

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, SAN ANTONIO DIVISION

No. 16822 Criminal

UNITED STATES OF AMERICA

vs.

LOUISE VIRGINIA SMITH

STATEMENT AS TO JURISDICTION

In compliance with Rule 37(a)(1) of the Federal Rules of Criminal Procedure and Rule 12 of the Rules of the Supreme Court of the United States, as amended, the United States submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the order of the District Court in this cause dismissing the indictment.

OPINIONS BELOW

The orders of the District Court dismissing the indictment and denying the Government's petition

for rehearing are not reported. Copies of these orders, which state the grounds of dismissal, are attached hereto as an Appendix.

JURISDICTION

The order of the District Court, as amended, dismissing the indictment was entered October 15, 1950, and the order denying the Government's petition for rehearing was entered January 3, 1951. The jurisdiction of the Supreme Court to review on direct appeal the decision of the District Court sustaining, prior to the attachment of jeopardy, the defendant's plea in bar to the indictment is conferred by 18 U.S.C. 3731. See also Rules 37(a)(2) and 45(a), F.R. Crim. P. The following decisions sustain the jurisdiction of the Supreme Court: *United States* v. *Goldman*, 277 U.S. 229, 236-237; *United States* v. *Oppenheimer*, 242 U.S. 85; *United States* v. *Barber*, 219 U.S. 72, 78.

QUESTION PRESENTED

Whether the Wartime Suspension of Limitations Act, which suspended the "running" of any statute of limitations applicable to offenses involving fraud against the United States "until three years after the termination of hostilities" as proclaimed by the President, is applicable to offenses of the type defined which were committed after the date of the proclamation of termination of hostilities, but within the three-year period following that date.

STATUTES AND PROCLAMATION INVOLVED

Section 1 of the Act of August 24, 1942, c. 555, 56 Stat. 747, as amended by the Act of July 1, 1944, c. 358, § 19(b), 58 Stat. 667 (18 U.S.C. (1946 ed.) 590a; now revised as permanent legislation, see 18 U.S.C. (1948 rev.) 3287, *infra*), commonly known as the Wartime Suspension of Limitations Act, provided in pertinent part on July 1, 1947, the date of the offenses involved herein:

> The running of any existing statute of limitations applicable to any offense against the laws of the United States (1) involving defrauding or attempts to defraud the United States or any agency thereof whether by conspiracy or not, and in any manner * * * shall be suspended until three years after the termination of hostilities in World War II as proclaimed by the President or by a concurrent resolution of the two Houses of Congress. * * *

18 U. S. C. (1948 rev.) 3287, which became effective on September 1, 1948, and hence was in effect on October 2, 1950. the date of the return of the indictment involved herein, provides in pertinent part:

> When the United States is at war the running of any statute of limitations applicable to any offense (1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy

or not, * * * shall be suspended until three years after the termination of hostilities as proclaimed by the President or by a concurrent resolution of Congress.

* * * * * *

Section 21 of the 1948 Act revising Title 18 of the United States Code (Act of June 25, 1948, c. 645, 62 Stat. 683, 862, 868) provides:

> The sections or parts thereof of the Revised Statutes or Statutes at Large enumerated in the following schedule are hereby repealed. Any right or liabilities now existing under such sections or parts thereof shall not be affected by this repeal.
>
> (Among the enumerated sections is the Wartime Suspension of Limitations Act of August 24, 1942, as amended, *supra.*)

Presidential Proclamation 2714 of December 31, 1946 (12 F.R. 1), provided in pertinent part:

> * * * Although a state of war still exists, it is at this time possible to declare * * * that hostilities have terminated.
>
> NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim the cessation of hostilities of World War II, effective twelve o'clock noon, December 31, 1946.

* * * * * *

STATEMENT

On October 2, 1950, an indictment in two counts was filed in the District Court charging the defendant with having, on or about July 1, 1947, violated Section 29 of the Criminal Code of 1909 (18 U.S.C. (1946 ed.) 73). Count 1 charged that she falsely made and forged the name of the payee upon the back of a check drawn on the Treasurer of the United States for the purpose of obtaining the amount of the check from the Government. Count 2 charged that she uttered the check as true, knowing the indorsement to be forged, with intent to defraud the United States.

The defendant moved to dismiss the indictment on the grounds that it "shows on its face that the offense charged * * * was committed more than three years prior to the return of the indictment" and so was "barred by limitation," and that "the offense charged did not come within the provisions of sec. 3287 of Title 18 (of the United States Code (see *supra*)), providing for the suspension of limitation in certain character of cases where the offense was committed while the United States was at war." On October 15, 1950, the District Court granted the motion to dismiss, the order stating simply that the dismissal was "on the ground that more than three years has elapsed from the time of the commission of the offense as alleged in the indictment and the return of the indictment."

On November 9, 1950, the Government filed a petition for rehearing pointing out that the offenses charged in the indictment involved defrauding the United States; that under the Wartime Suspension of Limitations Act of 1942, as amended, *supra* (18 U.S.C. (1946 ed.) 590a), the running of the statute of limitations applicable to such offenses was suspended "until three years after the termination of hostilities in World War II"; that hostilities in World War II were declared terminated as of December 31, 1946, by Presidential Proclamation 2714 of that date (see *supra*); that, accordingly, the three-year statute of limitations applicable to the offenses charged did not commence to run until three years after December 31, 1946, i.e., until December 31, 1949; and that, consequently, the indictment, which was returned on October 2, 1950, was not barred by the statute of limitations.[1]

On January 3, 1951, the petition for rehearing was denied. In its order of denial, the District Court conceded that at least the second count of the indictment charged an offense involving defrauding the United States within the meaning of the Suspension Act of 1942, as amended, but it held, nevertheless, that the indictment had properly

[1] The petition for rehearing also pointed out that the 1942 Suspension Act was repealed by Section 21 of the Act of June 25, 1948 (the Act revising Title 18 of the United States Code; see *supra*), but that the same Section 21 contains a saving clause with respect to "any rights or liabilities now existing under" any of the repealed laws.

been dismissed for being filed too late (i.e., more than three years after the date of commission of the alleged offenses), because the Suspension Act "applies only to offenses committed during the time prior to the termination of hostilities," whereas the offenses here charged were committed on July 1, 1947, subsequent to the date of the proclamation of termination of hostilities.[2]

THE QUESTION IS SUBSTANTIAL

The issue presented in this appeal is one of obvious importance in the administration of the federal criminal laws. It affects all offenses of the types defined in the suspension statute which were committed during the three-year period between December 31, 1946, and December 31, 1949. It is the Government's position that the statute of limitations for such offenses did not commence to run until the latter date, so that prosecutions therefor may be instituted as late as December 31, 1952 (where the limitations period is, as in this case, the ordinary period of three years). Under the decision appealed from, on the other hand, the statute of limitations for such offenses commenced immediately upon their commission, with the result that the prosecution of large numbers of them are already outlawed.

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[2] In view of its decision holding the indictment to have been properly dismissed on the stated ground, the court found it unnecessary to determine whether or not the first count as well as the second count charged an offense sounding in fraud on the United States.

The Government's construction of the suspension statute is supported by its literal terms. It provides that the "running" of any statute of limitations applicable to any offenses of certain defined types, notably those sounding in fraud on the Government, "shall be suspended until three years after the termination of hostilities" as proclaimed by the President. It makes no distinction between offenses committed before, and offenses committed after, the proclamation of termination of hostilities. Moreover, under the District Court's decision, prosecution for an offense committed on December 31, 1946, may be instituted as late as December 31, 1952, but prosecution for one committed on the following day, January 1, 1947, must have been instituted by January 1, 1950, or is now barred. The Government's construction avoids this anomalous result. Under it, December 31, 1952, is the deadline for instituting prosecutions for all offenses (of the types defined in the suspension statute) committed at any time between the effective date of the original statute (August 24, 1942) and December 31, 1949 (three years after the proclaimed cessation of hostilities).

It is undoubtedly true, as was said in *United States* v. *Gottfried*, 165 F. 2d 360, 368 (C.A. 2); certiorari denied, 333 U. S. 860, that the purpose of the suspension statute was to prevent crimes "committed in the hurly-burly of war" from

passing unpunished.[3] But war does not end with the termination of hostilities. The period of war lasts until the ratification of a treaty of peace or the proclamation of peace. *Hamilton* v. *Kentucky Distilleries Co.*, 251 U.S. 146, 165; *Hijo* v. *United States*, 194 U.S. 315, 323; *Ex parte Sichofsky*, 273 Fed. 694 (S.D. Cal.), affirmed *sub nom. Sichofsky* v. *United States*, 277 Fed. 762 (C.A. 9); cf. *Ludecke* v. *Watkins*, 335 U.S. 160, 166-170; *Woods* v. *Miller Co.*, 333 U.S. 138, 147 (Mr. Justice Jackson, concurring). Consequently, World War II did not end with the termination of hostilities proclaimed by the President on December 31, 1946. On the contrary, the Presidential Proclamation itself explicitly recognized that "a state of war still exists."

The 1942 Suspension Act, as amended, was repealed by Section 21 of the Act of June 25, 1948 (the Act providing for the revision of Title 18 of the United States Code), but the same section also provided that "rights or liabilities now existing under" all of the repealed laws "shall not be affected by this repeal." Section 3287 of revised Title 18 now provides that "When the United States is at war the running of any statute of limitations applicable to (any of certain defined types of offenses, including those involving fraud on the

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[3] The District Court quoted the Second Circuit's remark in the *Gottfried* case in its order denying the Government's petition for rehearing. The *Gottfried* case did not involve the issue here presented.

Government) shall be suspended until three years after the termination of hostilities as proclaimed by the President or by a concurrent resolution of Congress." In our view, it is unimportant whether the 1942 statute (which was in effect at the time of the alleged offenses) or Section 3287 of revised title 18 (which was in effect at the time of the return of the indictment) is the applicable statute in this case. The Reviser's Note to Section 3287 explains that "The phrase 'when the United States is at war' was inserted at the beginning of this section to make it permanent instead of temporary legislation, and to obviate the necessity of reenacting such legislation in the future." Thus, there is nothing in the changed phraseology to indicate that Congress intended to change the meaning of the suspension statute.

It is submitted that the decision of the District Court is erroneous and that the question presented by this appeal is a substantial one which should be settled by the Supreme Court.

Respectfully submitted.

/s/ PHILIP B. PERLMAN,
/t/ PHILIP B. PERLMAN,
Solicitor General.

APPENDIX

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS, SAN ANTONIO DIVISION

No. 16822 Criminal

UNITED STATES

vs.

LOUISE VIRGINIA SMITH

On this the 5th day of October, A. D. 1950, came on to be heard in the above entitled and numbered cause, the motion of the defendant to dismiss the indictment heretofore returned against her on the ground that more than three years has elapsed from the time of the commission of the offense as alleged in the indictment and the return of the indictment, and the court, after considering the argument of counsel, for the defendant, and the Government, is of the opinion that the motion of the defendant should be sustained.

It is therefore ORDERED, ADJUDGED AND DECREED by the Court that the indictment in this case be and the same is hereby dismissed, and the defendant discharged.

(S.) BEN H. RICE, JR.,
Judge.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Criminal No. 16822

UNITED STATES OF AMERICA

v.

LOUISE VIRGINIA SMITH

ORDER AMENDING ORDER OF DISMISSAL

The Order Dismissing the indictment in the above entitled and numbered cause is hereby amended by striking the second word thereof, "this", and adding the following immediately above the signature line:

"DONE AT SAN ANTONIO, TEXAS, this the 15th day of October, A. D. 1950"

DONE AT SAN ANTONIO, TEXAS, this the 30th day of October, A. D. 1950.

(S.) BEN H. RICE, JR.,
United States District Judge.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Criminal No. 16822

UNITED STATES OF AMERICA

vs.

LOUISE VIRGINIA SMITH

ORDER OVERRULING GOVERNMENT'S PETITION FOR REHEARING

The indictment in the instant case, returned and filed October 2, 1950, charges violations of 18 USCA 73 (1946 Ed.) in the First Count that on or about July 1, 1947, Louise Virginia Smith falsely made and forged the name of the payee upon the back of a check drawn on the Treasurer of the United States for the purpose of obtaining and receiving from the United States the sum of $90.00, and in the Second Count with uttering as true the check described in the First Count, then knowing the endorsement thereon to be forged, with intent to defraud the United States.

The defendant plead the three-year statute of limitation and further that no facts are alleged in the indictment to show that the statute has been suspended as to the particular offense charged in each count of the indictment, i.e., the indictment does not allege fraud or attempted fraud.

The government relied upon the Suspension Act, 18 USC 590(a), being the Act of August 24, 1942,

as amended, the pertinent provisions of which read:

> "The running of any existing statute of limitations applicable to any offense against the laws of the United States (1) involving defrauding or attempts to defraud the United States * * * shall be suspended until three years after the termination of hostilities in the present war as proclaimed by the President * * *"

The Second Count of the indictment, at least, charges fraud and is therefore, within the terms of paragraph (1) of the Suspension Act, 18 USC 590(a). See *Bailey* v. *United States*, 13 F. 2d 325, 9 Cir.

In view of the disposition to be made of this petition, it is unnecessary to determine whether or not the First Count of the indictment charges fraud and is, therefore, within the terms of paragraph (1) of the Suspension Act.

The court found that the three-year statute of limitations is applicable to the offenses charged in the indictment in this case and ordered the same dismissed and the defendant discharged; thereafter the government filed its motion for rehearing praying that the order dismissing the indictment be set aside and the same be reinstated.

The court is of the opinion that the Suspension Act, 18 USC 590(a), being the Act of August 24, 1942, as amended in 1944, applies only to offenses committed during the time prior to the termination of hostilities. Hostilities were proclaimed terminated as of December 31, 1946. The alleged offense

is charged to have occurred July 1, 1947, and the three-year statute of limitations barred prosecution of this offense three years thereafter. "* * * The purpose of the amendment (18 USC 590(a)) was not to let crimes pass unpunished which had been committed in the hurly burly of war * * *". *United States* v. *Gottlieb*, 165 F. 2d 360, page 368.

The petition for rehearing is denied.

DONE AT SAN ANTONIO, TEXAS, this the 3rd day of JANUARY, A. D. 1951.

(S.) BEN H. RICE, JR.,
United States District Judge.

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